Supreme Court, U.S.
FILED
JUL 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

87-275

NO:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

GERALD M. SPARKS,
PETITIONER

versus

CHARACTER & FITNESS COMMITTEE

TOMMY BELL - CHAIRMAN OF THE CFC
JUNIUS BEAVER, JR.
GRANT HELMAN
BILL BAIRD, III
STUART E. LAMPE
PAT GILL, SECRETARY TO THE BOARD
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

GERALD M. SPARKS
113 WEST SOUTHERN HEIGHTS
LOUISVILLE, KY 40214
PHONE: (502) 368-1435
(502) 582-1347

FOR PETITIONER

QUESTIONS PRESENTED

I. Did the U.S. Court of Appeals, 6th Circuit, fail to apply Supreme Court Case Law to this case thereby violating Appellant's 5th, 6th, 8th and 14th amendment rights when:

1. Appellant was never afforded notice of a hearing, nor was he ever given a due process hearing following his interview and subsequent rejection by the Character and Fitness Committee (CFC).

2. The Appellant was permitted to study, prepare and pay his fee to take the bar examination on four separate occasions, unaware of a "blackball" letter in his folder dating back to the 5-minute CFC interview of 1/28/80.

3. Appellant should have been informed of and given a copy of the letter issued by the CFC prohibiting him from ever being admitted to the Kentucky Bar.

4. No procedural or substantive due process was provided to Appellant.

5. The CFC interview should not provide one man with the legal right, after a 5-minute interview, to blackball an applicant without providing him with due process.

II. How can the Immunity Defense apply to the CFC when the CFC knew they were never going to pass the petitioner? Isn't it an administrative rather than a judicial function, and why was a new Kentucky Supreme Court rule written regarding immunity after suit was filed by Appellant?

III. Is the One-Man CFC Above the Law?

IV. Why didn't the Federal Court, in their opinion, address the issue of the petitioner finding a letter in his folder from day one, the day of his CFC interview, that he was never going to be passed on his exam.

PARTIES TO THE PROCEEDING BELOW

All parties appear in the caption of the case in the 6th Circuit.

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Supreme Court Rules of Kentucky
1.060(Old rule in existence when CFC sued
by Appellant)

3.160(4) (New rule Appellees wrote after
Appellant filed suit)

Exhibits:

1. CFC letter regarding Appellant
2. Courier Journal article on sponsors
/mentors
3. Kentucky Supreme Court Rules
2.060
3.160(4)
4. Courier Journal article on FBI

_____

NO.

_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

GERALD M. SPARKS,
PLAINTIFF, APPELLANT

versus

CHARACTER AND FITNESS COMMITTEE
DEFENDANT, APPELLEE

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT

PETITION FOR CERTIORARI

MAY IT PLEASE THE COURT:

The petition of the Appellant respectfully pleads that a Writ of Certiorari be issued to review the judgment and opinion of the Federal Court at the 6th Circuit entered in these proceedings on June 16, 1987.

OPINION BELOW

The opinion of the 6th Circuit is cited as Sparks v. Character & Fitness Committee, _____ Southwestern 2d _____ (Ky. 1987).

JURISDICTION

The judgment of the 6th Circuit, Federal Court, was entered on 6-16-87. This Petition for Certiorari to the Supreme Court, State of Kentucky, is filed herein within (90) days of the judgment below. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3) and United States v. Mendenhall, 446 U.S. 544, 64 L.Ed.2d 497, 100 S.Ct. 1870 (1980).

CONSTITUTIONAL PROVISIONS INVOLVED

The 5th, 6th, 8th and 14th amendments. Namely, the right of a bar applicant to be entitled to A) Notice of a Due Process Hearing, and B) To have a Due Process Hearing.

It is certainly cruel and unusual punishment under the 8th amendment to allow a man to study and prepare for the Kentucky Bar Exam four times, take his money for the exam, and

know from day one he would never be passed on the exam.

The 6th amendment right of confrontation was never offered to the Appellant.

STATEMENT OF THE CASE

Appellant filed suit in Federal Court in Louisville, Kentucky. Plaintiff's Motion for Summary Judgment was granted; Appellant appealed to the 6th Circuit; during oral argument the three-judge panel told the Appellees, "You boys have no defense! Are you better than U.S. Congressmen? They have no immunity from civil liability; Are you better than the AMA (American Medical Association)?" The Federal Court told them the AMA has no immunity from civil liability. The Court said, "if you have a secretary, would she have immunity from civil liability?" The Court said the answer is "no". The only question the Federal Court asked the Appellant is "did you have notice of a hearing, and did you have a due process hearing." The answer was, "no, I

did not." The Federal Court stated one thing in open court and went behind closed doors one year later and gave the Character and Fitness Committee (CFC) immunity from civil liability. Now the Appellant appears before this respected Court and asked this Court to:

A) Waive him into the Kentucky Bar

B) Award him $650,000 in damages

STATEMENT OF FACT

This is a case of first impression before this respected Court. When this Court applies the law to the facts, this case should represent a landmark decision in this country.

For a brief summation of the facts. From day one, 1-28-80, the day of the Appellant's CFC interview, the Appellant was blackballed by the CFC interviewer, Junius Beaver, Jr., after a five-minute interview. Beaver arbitrarily and capriciously sent a letter to the Kentucky Board of Bar Examiners blackballing Appellant based on information that was supplied to Beaver by the Appellant. The letter was then

placed in applicant's folder preventing him from ever being passed on the Kentucky Bar Exam. Interviewing prospective bar members in the past has been a mere formality and, at best, represents an administrative function.

The Appellant never received any notice of a hearing, nor was any due process hearing afforded to the Appellant. The Kentucky Board of Bar Examiners took Appellant's money four times for the bar exam, knowing that because of a letter placed in his file, they never intended to pass him. This Appellant was in fact blackballed by his CFC interviewer and was never given a fair and equal opportunity of being passed.

The CFC willfully, wantonly, maliciously and intentionally violated the Appellant's basic and fundamental Constitutional rights. Appellant was never provided with a copy of the above letter and it was never intended for the Appellant to find the letter in his folder.

The Kentucky Supreme Court rule in exis-

tence when the Appellant sued the Appellees was Rule 2.060 entitled, Committee's Decision as to Eligibility. That rule says the decision of the Character & Fitness Committee as to the eligibility of an applicant for admission to the Bar of this state shall be final unless, on motion of the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court, upon review of the record, overrules such decision.

Beaver, Jr. was the Appellant's Character & Fitness Committee. He never gave the Appellant ANY NOTICE OF A HEARING, NOR DID HE PROVIDE HIM WITH A DUE PROCESS HEARING. He intentionally caused a letter to be placed in Appellant's folder preventing him from ever being passed on the Kentucky Bar Exam.
Not only did the Appellant find the letter in his folder that said, "Do not pass," when you read it in conjunction with the Kentucky Supreme Court rule in existence at the time the

letter was written, he also saw "Do not pass" written on the outside of his folder.

After the Appellant sued the appellees, a new Kentucky Supreme Court rule (3.160(40) was written in an attempt to obtain immunity from civil liability. Writing a new rule is an admission by a party opponent that they didn't believe they had immunity in the first place! The new Kentucky Supreme Court rule 3.160(4) which reads as follows:

"Neither the Kentucky Bar Association nor its officers, agents, delegates or members shall be liable to any member of the bar nor to any other person charged or investigated by said association, its officers, agents or delegates, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial." The new rule appears to be unconstitutional because it provides for no due process.

If the Appellant was the first man they ever blackballed, why would they go to all the

time, trouble and expense of writing a new Kentucky Supreme Court rule?

Please consider these additional facts. Tommy Bell, the Chairman of the Character & Fitness Committee, told the Appellant after the Appellant found the letter in his file some three years after the letter was written, "we always intended to take your money for the Bar Exam, but we never intended to pass you!" Why would Mr. Bell make such a statement. He was arrogant and he thought he was untouchable! He gave the University of Kentucky $100,000 for 12 years as a gift. He thought I was a "little man" trying to be admitted to the Bar.

Consider these additional facts. Bar examiner, Stuart Lampe, told the Appellant, after the Appellant requested to see his exam paper "what is your exam number", the Appellant told him, then the bar examiner voluntarily said, "You passed my section," and indicated he had the Appellant's paper in one stack with all the other passing papers, and his non-passing

papers in a different location. When the Appellant asked why he only received 73 when 75 was passing since he had passed Lampe's section there was absolute dead silence; the bar examiner knew the Appellant's name, but he did not know his face when he came into the Bar Examiner's office unannounced. It was an old bar exam question the Appellant had in bar review course and he knew the answer like he knew the back of his hand.

Please consider this additional fact. There was an article that appeared in the Louisville Courier Journal in 1984 whereby the people that administer the Kentucky Bar Exam actually came out and admitted that if you have a sponsor or mentor when you take the Kentucky Bar Exam, you have a much greater chance of being passed; they also said you must pass the CFC before you can be admitted to the bar. This admission is discriminatory on its face! This would enable the CFC to maintain a private club if they wanted. Like any agency, the CFC

should be submitted to some kind of checks and balances system.

Over 30 states have now abolished Character & Fitness Committees because they serve no useful purpose. Presently, it does allow the one man during a five-minute interview to look at an applicant, and if he doesn't fit the physical image he wants a letter is placed in an applicant's folder preventing him from ever being passed. The five-minute interview was the first time Beaver had ever met the Appellant! Not only is it wrong, it is inherently wrong to place a letter in Appellant's folder and not provide him with any due process. In this country every man is supposed to have a fair and equal opportunity of passing a professional exam.

The Appellant has no criminal record; but he can show you 12 convicted felons practicing law in Kentucky, four of them are in Louisville.

LAW AND ARGUMENT

Supreme Court Case Law, the Willner v. Character & Fitness Case at 373 U.S. 96 (1963) and the Louis v. Supreme Court of Nevada 490 F. Supp. 1174, are crystal clear; they hold that a prospective bar applicant must have A) notice of a hearing, B) a due process hearing so he can be confronted and explain away anything that the CFC thinks they have against the man. NO NOTICE, NO DUE PROCESS HEARING WAS EVER GRANTED IN THE APPELLANT'S CASE. Beaver arbitrarily and capriciously placed a letter on the Appellant's folder preventing him FROM EVER being passed on the Kentucky Bar Exam.

When an applicant's money is taken for a professional exam, he must be given a fair and equal opportunity of being passed! To allow the CFC immunity from civil liability would put them above the law and prevent them from being subject to any type of checks and balance system. Certainly they have no immunity when they violate a bar applicant's basic and

fundamental civil rights! To grant civil immunity to a man who merely exercises an administrative function by interviewing prospective bar members would circumvent the law and allow the CFC to practice discrimination legally. Even Chief Justice Robert Stephens of the Kentucky Supreme Court believes the CFC should not have immunity. See City of London vs. Gas Services Co., 687 S.W. 2 144. If anyone violates civil rights, they should be made to pay for violating those rights.

No man is this country is supposed to be above the law. The one man CFC has no power to hear cases, render written opinions, conduct trials, set bail, set bond, or impose sentencing. He only interviews prospective bar members and, therefore, he has no judicial immunity. Interviewing prospective bar members is purely an administrative function.

A professional exam is supposed to be based upon merit and not on who you know or

whether or not a letter has been placed in your file.

What gives one man the right, power and authority to place a letter in a man's folder without his basic and fundamental due process rights being granted? Beaver, Jr. clearly abused his discretion when he placed a letter in applicant's folder, blackballing the Appellant. This case should set a very big precedent in this country!

The Appellant asks that this not become a political decision as he has worked very hard for his education. A man's mind is a horrible commodity to waste! This case does in fact show that corruption exists within the administration of the Kentucky Bar Exam. Beaver has denied Appellant access to his chosen profession. How many other people have been treated in this manner and in how many other professions does this extreme and outrageous conduct exists?

Please allow this case to set a precedent

for those people that administer professional exams. They should be fair to all people, or be prepared to pay a price for violating an individual's basic and fundamental constitutional rights!

CONCLUSION

For the reasons set out herein, this Honorable Court should and ought to issue its Writ of Certiorari to review the judgment and opinion of the 6th Circuit concerned herein.

Respectfully Submitted,

GERALD M. SPARKS
113 West Southern Heights
Louisville, Kentucky 40214
(502) 368-1435
(502) 582-1347

VERIFICATION

I, Gerald M. Sparks, hoping to be a member of the Bar of Kentucky and the person of record for Appellant in the above entitled matter.

I have read the foregoing petition and know the contents thereof.

I declare under penalty of perjury under the laws of Kentucky that the foregoing is true and correct. Executed on July 16, 1987 at Louisville, Kentucky.

Gerald M. Sparks

GERALD M. SPARKS

APPENDIX

Appendix "A"
6th Circuit Opinion
Sparks v. Character & Fitness Committee
Judgement of Federal 6th Circuit
Entered on 6-16-87

Appendix "B"
Petition for Rehearing - Denied

I certify that all the appendices attached to the petition for Certiorari filed herein are true copies of what they purport to be.

Gerald M. Sparks

GERALD M. SPARKS

STATEMENT OF MAILING

I, GERALD M. SPARKS, hereby certify that, on the 16 day of July, 1987, I served 3 copies of the foregoing petition by personally placing same in a sealed envelope first class postage thereon fulled prepaid in United States Post Office Mail box in Louisville, Kentucky, to each of the parties thereto, as follows:

1. To the United States Supreme Court, office of the Clerk, Washington, D.C. 20543, enclosing established filing fee; and

2. On appellees, through their counsel of record, John Valentine, 1200 One Riverfront Plaza, Louisville, Kentucky 40202 (3 copies given).

IT IS FURTHER certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

Gerald M. Sparks

GERALD M. SPARKS

COUNTY OF JEFFERSON

STATE OF KENTUCKY

On July 14, 1987, before me the under signed, a Notary Public in and for said state, personally appeared Gerald M. Sparks, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Patsy C. Gatchell

Notary Public for said County and State

APPENDIX

A. SPARKS V. CHARACTER & FITNESS COMMITTEE
U.S. DISTRICT COURT, WESTERN DIST. OF KY
ORDER OF DISMISSAL

B. SPARKS V. CHARACTER & FITNESS COMMITTEE
6TH CIRCUIT OPINION
JUDGMENT OF FEDERAL 6TH CIRCUIT

C. PETITION FOR REHEARING - DENIED

APPENDIX A

ORDER OF DISMISSAL

CIVIL ACTION NO. 85-209

For the reasons set forth in the memorandum opinion this day entered, IT IS ORDERED:

1. Defendants' motion to dismiss is GRANTED; and,

2. Plaintiff's complaint is DISMISSED from the court's docket.

This is a final and appealable order and there is no just reason for delay.

DATED June 25, 1985

EDWARD H. JOHNSTONE, JUDGE
UNITED STATES DISTRICT COURT

APPENDIX A

NO. 85-5629

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

On appeal from the United States District Court for the Western District of Kentucky. Decided and Filed May 11, 1987.

Before: Engel, Krupansky and Ryan, Circuit Judges.

Ryan, Circuit Judge. Gerald Sparks appeals 'pro se' the district court's dismissal of his complaint against the Kentucky

Committee on Character and Fitness, its members, two employees hired by the Committee, one member of the Board of Bar Examiners, and the Chief Justice of the Kentucky Supreme Court. The district court held that the defendants were entitled to absolute judicial, or quasi-judicial, immunity from liability in appellant's 42 U.S.C. §1983 violations of his procedural and substantive due process rights, his equal protection rights, and his rights under the eighth amendment of the United States Constitution. He also alleged breach of contract, fraud and deceit.

Specifically, Sparks averred that in 1980, when he was first a candidate for admission to the Kentucky Bar, he was interviewed, pursuant to Kentucky Supreme Court Rule 2.040, by Junius J. Beaver, Jr., an associate member of the Committee. At the conclusion of the interview, Mr. Beaver addressed a letter to the Kentucky State Board of Bar Examiners stating that because Sparks was not possessed of the requisite character and moral fitness,

he could not recommend that Sparks take the upcoming Kentucky Bar Examination.

Sparks contends that despite Mr. Beaver's adverse recommendation, of which Sparks had no knowledge, "the powers that be still allowed him to take the Kentucky Bar exam four times ... knowing full well that the plaintiff had been blackballed." Sparks failed the bar examination three times; his fourth examination was never graded.

On April 17, 1985, the district court dismissed the action against defendant Robert F. Stephens, Chief Justice of the Kentucky Supreme Court, holding that the Chief Justice was entitled to absolute immunity because consideration of an application for admission to the bar is a judicial act for which a judge cannot be held liable in damages. On June 25, 1985, the court dismissed the action against the remaining defendants, finding:

> "The Kentucky Supreme Court has extensive authority over the Board of Bar Examiners and the Character and

Fitness Committee. Their members are appointed by the Supreme Court and the Court must approve the rules and regulations promulgated by those members. Supreme Court Rules 2.000 & 2.040. In addition, the court directs which subjects are to be tested and the minimum score needed to pass the examination. Supreme Court Rule 2.090. Finally, the court retains the final authority to determine who will be admitted to practice law in the State. Supreme Court Rule 2.060."

The court concluded that the functions of the Board of Bar Examiners and the Committee relating to Sparks' application for admission to the bar "cannot be divorced from the actions of the Supreme Court of Kentucky" and these activities are also "clothed with judicial immunity." The court ordered Sparks' complaint dismissed.

II

It is well-established that judges of

courts of general jurisdiction are immune from liability for their judicial acts. Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1871). Except for acts in the "clear absence" of jurisdiction, judicial immunity is absolute. Stump v. Sparkman, 435 U.S. 349(1978); King v. Love, 766 F2d 962 (6th Cir.), cert. denied, _ U.S._, 10-6 S. Ct. 351, 88 L.Ed. 2d 320 (1985).

While the defense of judicial immunity is very broad, it does not protect a judge in the performance of non-judicial acts, Lynch v. Johnson, 420 F.2d 818, 820 (6th Cir. 1970). In Sparkman, the Supreme Court stated:

> "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity."

435 U.S. at 362. In the present case, the district court determined that the act of

evaluating an application for admission to the state bar is judicial in nature.

The power to determine who should practice before the courts has been aptly summarized by Chief Justice Taney:

> "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."

Ex parte Secombe, 60 U.S. (19 How.) 9, 13 (1856). This power is not only exclusive; it is inherently judicial. Simons v. Bellinger, 643 F.2d 774, 780 (D.C. Cir. 1980). Accord Louis v. Supreme Court of Nevada, 490 F. Supp. 1174, 1182 (D. Nev. 1980); Galahad v. Weinshienk, 555 F.Supp. 1201, 1204 (D.Colo. 1983). Moreover, in this case, the Kentucky Constitution charges the Kentucky Supreme Court with the duty to "govern admission to the bar and the discipline of members of the bar." Ky.

Const. of 1891, § 116 (1976).

The court's exercise of its inherent power to choose its officers is substantially determinative of the character and quality of our entire judicial system, state and federal. Our system of justice depends, in substantial measure, upon the service of competent and qualified attorneys. The decision whether to admit or deny an applicant admission to the bar, and thus to determine the composition and quality of the bar, affects both the quality of justice in our courts and the public's perception of that quality. The decision is therefore integral to the very essence of the judicial process.

The inherently judicial nature of the governance of the bar admission process is not diminished by the fact that an overburdened state supreme court delegates the admission of part of this responsibility to authorized persons. The Kentucky Supreme Court retains the ultimate authority to determine who will be admitted to practice law in the State of

Kentucky and who will not. Indeed, as his pro se brief indicates, Sparks was aware that the Kentucky Supreme Court had delegated its responsibilities in these matters to the Committee of Character and Fitness and the Board of Bar Examiners, and he does not question the validity of that delegation. Therefore, his expectations have clearly been satisfied. Sparkman, 435 U.S. at 362.

We hold that the act of considering an application for admission to the bar, particularly when that duty is imposed upon the judiciary by constitution, is a judicial act. When it is performed by a judge, he or she is entitled to absolute judicial immunity. Therefore, the district court was correct in dismissing the plaintiff's complaint against the Chief Justice of the Kentucky Supreme Court.

III

The question that next arises is whether the remaining defendants, who are not judges, nevertheless enjoy immunity for their activi-

ties in this matter. The "nonjudicial" defendants are the Kentucky Committee of Character and Fitness, its members, two employees hired by the Committee, and one member of the Board of Bar Examiners. Absolute judicial immunity "attaches to public officials who perform quasi-judicial duties" Campbell v. Patterson, 724 F.2d 41,43 (6th Cir. 1983), cert. denied, 465 U.S. 1107 (1984). It is "a general principle of the highest importance to the proper administration of justice that a judicial officer ... be free to act upon his own convictions, without apprehension of personal consequences to himself." Sparkman, 435 U.S. at 355. Public policy requires "absolute immunity ... for all persons - governmental or otherwise - who [are] integral parts of the judicial process." Briscoe v. Lahue, 460 U.S. 325, 335 (1983). In Campbell, we held that Michigan's Attorney General, obligated by statute to perform duties of a quasi-judicial nature, enjoys absolute immunity even when the action

taken is erroneous.

A survey of the case law reveals that public policy requires absolute immunity for public officials performing quasi-judicial functions in a number of circumstances. It has been granted to members of an attorney disciplinary committee, Simons, 643 F.2d at 780; to a state bar association conducting disciplinary proceedings, Clark v. State of Washington, 366, F.2d 678 (9th Cir. 1966); to lawyers serving on a mediation panel, Mills v. Killebrew, 765 F.2d 69 (6th Cir. 1985); to the court's clerk for acts within the scope of his quasi-judicial duties, Denman v. Leedy, 479 F.2d 1097 (6th Cir. 1973); to "friends of the court," Johnson v. Granholm, 662 F.2d 449 (6th Cir. 1981), cert. denied, 457 U.S. 1120 (1982); and to prosecutors engaging in prosecutorial activity, Imbler v. Pachtman, 424 U.S. 409 (1976).

In the present case, the district court determined that the Committee and Board of Bar Examiners were performing quasi-judicial

functions. In reaching this decision, the court relied on Hoover v. Ronwin, 466 U.S. 558 (1984). In Hoover, the plaintiffs, who had failed the Arizona Bar Examination, brought suit against the members of the Arizona Supreme Court Committee on Examinations and Admissions, alleging that the committee members had conspired to restrain trade in violation of the Sherman Act by artificially reducing the number of competing attorneys in Arizona. The Supreme Court determined that the actions of the committee members, in using a grading formula to determine admissions to the bar, could not be divorced from the actions of the Arizona Supreme Court. The Court noted that the members were appointed by the supreme court and the court "retained strict supervisory powers and ultimate full authority over its actions." Id. at 572. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from anti-trust

liability under the doctrine over sovereign immunity announced in Parker v. Brown, 317 U.S. 341 (1943). Hoover, 466 U.S. at 573.

Similarly, in the Simons case, two attorneys sued the members of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. They alleged that the defendants maliciously harassed them during an illegal investigation of their law practice. The court concluded that the committee members' work was "functionally comparable to the work of judges. ... they serve as an arm of the court and perform a function which traditionally belongs to the judiciary." 643 F.2d at 781. The court held that the members of the committee were entitled to absolute judicial immunity.

In this case, there can be no doubt that the functions of the Committee and Board of Bar Examiners are, at least, quasi-judicial. Accord Childs v. Reynoldson, 623 F. Supp. 135 (D.C. Iowa 1985). The acts complained of in this case were performed by the defendants in

obedience to duties imposed upon them by the Kentucky Supreme Court which is charged under the Kentucky Constitution with the obligation to enact rules "govern[ing] admission to the bar and discipline of members of the bar." In response to this constitutional command, the Kentucky Supreme Court adopted Supreme Court Rule 2.000 creating the Board of Bar Examiners and describing its duties, and Rule 2.040 creating the Committee on CHaracter and Fitness, determining its composition, and defining its duties. These rules require, in sum, that the respective committees, their members and staff personnel, act on behalf of the Kentucky Supreme Court in administering procedures for admission to the bar of Kentucky and in determining the character and fitness of applicants as a condition precedent to admission. In executing these duties, the committee members and staff personnel act under the direct supervision of the Kentucky Supreme Court and in its name. Their activities cannot be separated from the actions of

the Supreme Court of Kentucky. The actions of the defendants in this case are, therefore, not only "functionally comparable" to judicial duties, they are the functional equivalent.

The act of considering an application to the bar is a judicial act. And it is no less a judicial act simply because it is performed by nonjudicial officers in whom the responsibility for the performance of such duties is lawfully delegated by the judiciary. Therefore, those who perform this duty on behalf of the judiciary are entitled to the same judicial immunity as would be enjoyed by judicial officers performing the same act.

The decision of the district court is AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

NO. 85-5629

Before: Engel, Krupansky and Ryan, Circuit Judges.

JUDGMENT

On appeal from the United States District Court for the Western District of Kentucky.

THIS CAUSE came on to be heard on the record from the said district court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said district court in this case be and the same is hereby affirmed.

Each party is to bear its own costs on appeal.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

(Filed May 11, 1987, issued as mandate 6/25/87)

APPENDIX C

ORDER

NO. 85-5629

Before: Engel, Krupansky and Ryan, Circuit Judges.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

EXHIBITS

1. CFC letter regarding Appellant
2. Courier Journal article on sponsors /mentors
3. Kentucky Supreme Court Rules
   - 2.060 - Old Rule - Rule in existence when Respondents were sued by Petitioner
   - 3.160(4) - New Rule - Rule written after Respondents were sued by Petitioner

EXHIBIT I

(Letter on "Speckman & Beaver" letterhead, Lincoln Federal Building, South Fourth Street, Louisville, KY 40208)

January 28, 1980

Ms. Rosemary Puckett, Executive Assistant
Kentucky State Board of Bar Examiners
716 Lexington Building
201-215 West Short Street
Lexington, KY 40507

Re: Jerry Marshall Sparks

Dear Ms. Puckett:

I am enclosing herewith the application on the above named individual.

The Character and Fitness Committee may or may not be aware that I personally interview each applicant that I am sent to check.

In interviewing the above applicant the following information was supplied by him as a correction or change on his application.

1. He has been divorced, this took place in

Maryland and there is still a piece of real estate to be settled in the divorce action.

2. He has been arrested twice in the State of Maryland. He stated both were probated and were on warrants taken out by his wife while the divorce was in progress. He was arrested once for breaking and entering and once for assault.

3. Mr. Sparks stated he has taken the Maryland Bar Exam six (6) times and has not passed it. He has taken the Pennsylvania Bar Exam two (2) times and did not pass it.

He listed a Larry Stevenson of 1301 Vermont Road, Belair, Maryland, as an attorney reference, I attempted to call him, but there is not listing for an attorney in Belair by this name.

One of Mr. Sparks character affidavits is signed and then notarized by the same individual.

In interviewing Mr. Sparks he stated he gave false answers on his application knowingly but did so because he felt the Kentucky Bar would not let him take its exam if he gave

truthful answers.

Based on the above problems I can not recommend Mr. Sparks for the taking of the February 1980 Kentucky State Bar Exam.

If you have any questions, please advise.

Very truly yours,

Junius V. Beaver, Jr.,

Attorney

JVB:mms

Encls

(letter signed by Junius V. Beaver)

EXHIBIT 2

Quoted from an article in the Louisville Courier Journal, Saturday, May 12, 1984, entitled "State Bar Association Suggests 'Mentors' for Law Students":

" ... Under the proposal, all law students in the state would have to sign up with a 'mentor' a practicing attorney or judge with whom the student would meet as often as once a month during three years of law school.

The mentor would report on the student's 'character' to a bar committee that ultimate determines if the candidate is fit to practice law. ...

The mentor program is part of a sweeping act of proposals before the Kentucky Supreme Court that would reshape the way new attorneys are admitted to practice in the state. ...

Savage contends that regular evaluations by a mentor would be markedly superior to the

perfunctory five-minute interview with a 'character and fitness committee' that bar candidates now undergo - a session many lawyers regard as meaningless. ...

Those who failed to obtain mentors could still apply to be admitted to the bar, but their character and fitness would be subject to intensive investigation and scrutiny. ...

'The public already thinks we're a closed agency' Lampe said. 'This will make the public even more unhappy.'..."

EXHIBIT 3

Kentucky Supreme Court Rule 2.060:

"Rule 2.060 Committee's Decision as to Eligibility

The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this State shall be final unless, on motion by the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon review of the record overrules such decision. (Amended effective January 1, 1978)"

"SCR 3.160(4):

"Paragraph (4) of SCR 3.160 shall read:

Neither the Kentucky Bar Association nor its officers, agent delegates or members shall be liable to any member of the bar nor to any other person charged or investigated by said association its officers, agents or delegates,

for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial."

Supreme Court, U.S.
FILED
OCT 13 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-275

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

GERALD M. SPARKS - - - - Petitioner

versus

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY,
JUNIUS J. BEAVER, JR.,
THOMAS P. BELL,
GRANT M. HELMAN,
WILLIAM J. BAIRD, III,
STUART E. LAMPE,
PAT GILL - - - - - - Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OGDEN & ROBERTSON
JOHN T. BALLANTINE*
WILLIAM A. BARTH
1200 One Riverfront Plaza
Louisville, KY 40202
(502) 582-1601
Counsel for Respondents

**Counsel of Record*

WESTERFIELD-BONTE CO., 619 W. KENTUCKY—P.O. BOX 3251, LOUISVILLE, KY.

QUESTION PRESENTED FOR REVIEW

1. Should this Court grant a writ of certiorari to review the granting of quasi-judicial immunity to the Kentucky Supreme Court's Committee on Character and Fitness (hereinafter "the Committee"), one member of the Kentucky Supreme Court's Board of Bar Examiners (hereinafter "the Board"), and four members and an employee* of the Committee from the claims of Gerald Sparks (hereinafter "Sparks") for monetary damages under 42 U.S.C. § 1983?

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*The Chief Justice of the Kentucky Supreme Court was originally a defendant and an appellee, but was dismissed on Sparks' motion. Also, Rosemary Puckett was originally a named defendant and a named appellee, but has been dropped as a party in this Court. All other parties below are named in the caption of this brief and are hereinafter called "Respondents".

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No. 87-275

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

GERALD M. SPARKS - - - - *Petitioner*

v.

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY,
JUNIUS J. BEAVER, JR.,
THOMAS P. BELL,
GRANT M. HELMAN,
WILLIAM J. BAIRD, III
STUART E. LAMPE,
PAT GILL - - - - - - *Respondents*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CITATIONS TO OPINIONS AND JUDGMENTS DELIVERED IN COURTS BELOW

1. *Sparks* v. *Character and Fitness Committee of Kentucky,* No. 85-5629 (6th Cir. July 16, 1987) (Order denying Sparks' petition for a rehearing en banc). (Petitioner's Appendix C.)

2. *Sparks* v. *Character and Fitness Committee of Kentucky,* 818 F. 2d 541 (6th Cir. 1987) (Opinion af-

firming the district court judgment). (Petitioner's Appendix A.)

3. *Sparks* v. *Character and Fitness Committee of Kentucky,* No. 85-209 (W.D. Ky. June 25, 1985) (Order and Memorandum Opinion). (Appendix hereto, pp. 1a-3a.)

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

Sparks' petition for rehearing en banc made to the United States Court of Appeals for the Sixth Circuit (hereinafter "Sixth Circuit") was denied on June 16, 1987. Sparks had 90 days from the denial of his petition for a rehearing en banc to file his petition for writ of certiorari (hereinafter "Petition"). 28 U.S.C. § 2101(c). Sparks' Petition was docketed on July 22, 1987. This Court has jurisdiction to entertain the petition for writ of certiorari under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISION, STATUTE AND COURT RULES

Statute:

42 U.S.C. 1983

Kentucky Constitution § 116

United States Supreme Court Rules:

17.1, 17.1(a), 17.1(c)

Kentucky Supreme Court Rules:

2.000(1), 2.000(2), 2.000(3), 2.040(1), 2.040(2), 2.040(3), 2.060, 2,090, 2.095

All are quoted in the Appendix hereto.

STATEMENT OF THE CASE

Sparks filed a complaint in the United States District Court for the Western District of Kentucky (hereinafter "the district court") seeking monetary damages under 42 U.S.C. § 1983 from the Chief Justice of the Kentucky Supreme Court, the Committee, three members of the Committee (Thomas P. Bell, Grant M. Helman, and William J. Baird, III), an associate member of the Committee (Junius J. Beaver, Jr.), two employees of the Committee (Pat Gill and Rosemary Puckett), and a member of the Board (Stuart E. Lampe). Sparks claimed that the Respondents violated his constitutional procedural and substantive due process rights, equal protection rights, and Eighth Amendment rights.[1] The only remedy sought for those alleged violations was compensatory damages of $120,000, punitive damages of $500,000, attorneys's fees, and court costs.

Sparks averred that he was interviewed by Junius J. Beaver, Jr., before he first took the bar examination. After that interview, Mr. Beaver sent a letter to the Board stating that Sparks was not qualified to take the bar examination because he did not have the requisite moral character. Sparks further averred that he then took the Kentucky bar exam four times. He failed three times, and the fourth time his examination was

[1]Because the district court dismissed Sparks' action on Respondents' motion to dismiss for failure to state a claim, the averments in the complaint are referred to as "facts" for purposes of this proceeding—even though Respondents take strong issue with many of those averments.

not graded. Finally, Sparks averred that he was never given a due process hearing concerning his moral fitness to practice law.[2]

The district court dismissed Sparks' complaint, holding that Respondents were entitled to at least quasi-judicial immunity because they are integral parts of the judicial process. The Sixth Circuit affirmed.

SUMMARY OF ARGUMENT

The Petition should be denied because Sparks has cited no special reason—and none exists—for granting it. The Sixth Circuit and the trial court properly granted quasi-judicial immunity to Respondents.

The consideration of an application for admission to the bar is a judicial act. As required by Section 116 of the Kentucky Constitution, the Kentucky Supreme Court, by rule, acting by and through the Committee and Board and their respective members and staff, "governs admission to the bar", thereby governing the quality and integrity of lawyers. This regulation of the admission process is essential to the judicial system. Thus, the acts of the Respondents in reviewing Sparks' application for admission to the Kentucky bar were required by the Supreme Court rules, adopted pur-

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[2]Sparks repeats this statement to this Court at pages 5 and 11 of his Petition, but the charge is patently false. Included in the Appendix (pp. 10a-13a) are copies of the pages of a transcript of the Committee's hearing in which Sparks, with his attorney present, admitted to giving false answers on his bar application because he felt like a true answer would be held against him and he "didn't think they'd [the Committee would] find out about it!"

suant to Constitutional mandate and, therefore, were, *at least,* quasi-judicial and entitled to quasi-judicial immunity.

ARGUMENT

There are No Special Reasons for Granting Sparks' Petition to Review the Grant of Quasi-Judicial Immunity to the Respondents.

United States Supreme Court Rule[3] 17.1 provides that review on writ of certiorari "will be granted only when there are special and important reasons therefor." Sparks has given no special or important reasons to justify the granting of the petition. Sparks only complains about the grant of quasi-judicial immunity to members of the Kentucky Supreme Court's Committee and its Board. On the issue presented, there is *no* conflict among the federal courts of appeals; and the district Court and Sixth Circuit did *not* depart from the usual course of judicial proceedings. (USSCR 17.1(a)); the case involves no important federal question which has not been decided by this Court. (USSCR 17.1(c)); and, finally, the decision does not conflict with any of this Court's precedents. (USSCR 17.1(c)).

The federal courts of appeals have consistently applied the principles of quasi-judicial immunity which have been adopted by this Court. The circuits have ruled that bar examiners, committees on unauthorized practice of law, and bar associations are entitled to

[3]Hereafter, "USSCR"; Kentucky Supreme Court Rules will be cited "KSCR".

quasi-judicial immunity for their acts in regulating the practice of law. *Childs* v. *Reynoldson,* 777 F. 2d 1305 (8th Cir. 1985) (members of the board of bar examiners); *Simons* v. *Bellinger,* 643 F. 2d 774 (D.C. Cir. 1980) (in determining what constitutes the unauthorized practice of law, members of the committee on the unauthorized practice of law performed judicial acts for which they had judicial immunity); *Clark* v. *State of Washington,* 366 F. 2d 678, 681 (9th Cir. 1966) (state bar association had immunity for disbarring an attorney).

The Eighth Circuit has specifically held that the consideration of an application for admission to the bar is a judicial act. In *Childs,* the facts were essentially identical to the facts here. The plaintiff failed the bar exam twice and then brought suit against the Iowa Supreme Court and Iowa Board of Law Examiners *and its members* claiming that their wrongful conduct prevented him from passing the bar. *Id.* at 1306. An Iowa statute (not a Constitution, as here) gave the Iowa Supreme Court exclusive power to admit persons to the practice of law before Iowa's state courts. The Eighth Circuit held that consideration of admission to the bar was a judicial act and that the Court and the Board and their members were immune from liability.

Those decisions, and the decision of the Sixth Circuit in this case, are based on the fact that a character and fitness committee and a board of bar examiners and their members and staff are merely arms of the

state supreme court. In this case, the Committee and Board and its members and staff, under the supervision and control of the Kentucky Supreme Court, merely carry out duties assigned to them by the Supreme Court.

It is important to note that the holding of the federal courts of appeals cited above are entirely consistent with decisions of *this* Court. The purpose of granting judicial immunity is to leave a judicial officer "free to act upon his own convictions, without apprehension of personal consequences to himself." *Stump* v. *Sparkman,* 435 U. S. 349, 355 (1978).

More important, this Court has also applied immunity to persons who are *not* judges but *who perform acts that are integral parts of the judicial process. Briscoe* v. *Lahue,* 460 U. S. 325 (1983) (witnesses); *Imbler* v. *Pachtman,* 424 U. S. 409 (1976) (prosecutors performing prosecutorial acts). The Sixth Circuit is in accord: *Mills* v. *Killebrew,* 765 F. 2d 69 (6th Cir. 1985); *Johnson* v. *Granholm,* 662 F. 2d 449 (6th Cir. 1981), *cert. denied,* 457 U. S. 1120 (1982); and *Denman* v. *Leedy,* 479 F. 2d 1097 (6th Cir. 1973).

In this case, the Respondents' acts in considering Sparks' application for admission *are* an integral part of the judicial process. The Kentucky Supreme Court's exclusive authority to regulate admission to the bar is derived from § 116 of the Judicial Article of the Kentucky Constitution: "The Supreme Court shall, by rule, govern admission to the bar . . ." Thus, the Kentucky Constitution, approved by the people, essentially

mandates that consideration for admission to the bar *is* a judicial act.

In response to that mandate, the Kentucky Supreme Court adopted rules delegating authority to, and governing, both the Board and the Committee. Those rules clearly demonstrate that actions of the Board and Committee and their respective members and personnel are controlled by the Kentucky Supreme Court.[4] The Board and the Committee and their members are selected and appointed by the Kentucky Supreme Court (KSCR 2.000(1) and 2.040(1)). The Kentucky Supreme Court places responsibility on the Board for administering the Bar examination (KSCR 2.000(3)). The Committee is charged by the Supreme Court with the responsibility of determining the age, residence, character and fitness, education and general qualifications of applicants for admission to the bar (KSCR 2.040(3)). The actions of the Board and the Committee are closely supervised by the Kentucky Supreme Court (KSRC 2.000(2) and 2.040(2)). The Kentucky Supreme Court specifies the subjects to be tested on the bar exam, the minimum score, the testing procedure, and the fees for the bar exam (KSCR 2.090). Most important, the Kentucky Supreme Court has *ultimate* responsibility for deciding whether a candidate is ad-

[4]Sparks claims that the Kentucky Supreme Court's amendment to Rule 3.160(4), which he miscited as Rule 3.160(40), is an admission that Respondents do not have immunity. Petition at 7. Kentucky Supreme Court Rule 3.160(4) applies only to disciplinary cases involving unprofessional conduct of attorneys who have been admitted to the bar. It has no relevance whatsoever to this case.

mitted to the bar (Ky. Const. §116, KSCR 2.060 and 2.095). The Board and Committee only assist the Kentucky Supreme Court in that decision. The Court has delegated to the Committee the *authority* to *admit* to the bar, but by the Constitution and by the Court's rule-making power the *responsibility* for admission or denial is in the Supreme Court.

The actions of the Committee and the Board and their members and staff in considering the application for admission simply cannot be separated from the actions of the Kentucky Supreme Court. Their actions *are* an integral part of the judicial process, rather than a mere administrative function as argued by Sparks in his Petition at 5, 12. For this reason, the Committee and the Board and their members and staff are entitled to quasi-judicial immunity.

In an analogous context, this Court has held that a character and fitness committee and a board of bar examiners are entitled to immunity from antitrust liability because of "state action". *Hoover* v. *Ronwin,* 466 U. S. 558 (1984). In *Hoover,* the plaintiff, after failing to pass the bar exam, sued the individual members of the committee on bar examinations and admissions, alleging a conspiracy to restrain trade by limiting the number of lawyers in the state. This Court held that, because the actions of the character and fitness committee and board of bar examiners were tightly controlled by the state supreme court, their actions in the admissions process constituted state action which insulated them from antitrust liability.

In *Hoover,* this Court based its holding on several factors which are present in this case: the bar examiners are selected and appointed by the state's supreme court; the bar examiners are subject to the supervisory powers of the state's supreme court; the state's supreme court set forth the general subjects to be tested and the general qualifications of the applicants; and, finally, the supreme court had the final authority to admit or deny admission to an applicant. For all these reasons, the individuals in that case were held to be part of the state supreme court and, therefore, their actions were considered state action. For the same reasons, the challenged actions of the Respondents are state actions of the Kentucky Supreme Court, protected by judicial immunity.

Since the decision of the Sixth Circuit granting quasi-judicial immunity to the Respondents in this case is entirely consistent with the decisions of this Court and of the other federal courts of appeals, a conflict among the federal courts of appeals cannot be a basis for granting the Petition.

One of the other special reasons for granting a petition for writ of certiorari is that the Sixth Circuit or trial court departed from the usual course of judicial proceedings. (USSCR 17.1(a)). Sparks has not claimed any such departure and indeed, there is none.

Another special reason for granting a petition for writ of certiorari would be that there are important federal questions that have not yet been decided by this Court. (USSCR 17.1(c)). As discussed above, the

issues on this Petition *have* been decided by this Court and by various federal courts of appeals—all adversely to Sparks contentions.

Contrary to Sparks' general assertion, (Petition at 4), he raises no important *undecided* federal questions in his petition. He simply argues that judicial immunity does not apply to those who do not "hear cases, render written opinions, conduct trials, set bail, set bonds, or impose sentencing." Petition at 12. Unfortunately for him, however, this Court, in *Briscoe,* 460 U. S. 325 (1983), and *Imbler,* 424 U. S. 409 (1976), has already decided that judicial immunity extends beyond judges to those who are an integral part of the judicial process. The Respondents *are integral* parts of the judicial process and *are* entitled to the quasi-judicial immunity

The final special reason for granting a petition for writ of certiorari would be that the decision of the Sixth Circuit conflicts with this Court's precedents. (USSCR 17.1(c)). As discussed above, the Sixth Circuit's decision in this case is entirely consistent—not in conflict—with Court precedent in the closely analogous cases of *Hoover* v. *Ronwin,* 466 U. S. 558 (1984); *Briscoe* v. *Lahue,* 460 U. S. 325 (1983); *Stump* v. *Sparkman,* 435 U. S. 349 (1978); and *Imbler* v. *Pachtman,* 424 U. S. 409 (1976); all discussed above.

Sparks cites *Willner* v. *Committee on Character and Fitness,* 373 U. S. 96 (1953), as support for his Petition. Petition at 11. *Willner,* however, involved the simple issue of whether a bar applicant was entitled to

a due process hearing. That case did not involve the issue of whether a committee on character and fitness was entitled to quasi-judicial immunity from liability for damages. For that reason, *Willner* is totally inapplicable to the issue presented by this case.

CONCLUSION

The Petition fails to state a single special reason for the Court to hear this case. Moreover, extensive, well-established case law in this Court and other federal appellate courts shows that the Petition is without merit. Respondents, therefore, respectfully request that this Court deny Sparks' Petition.

Respectfully submitted,

JOHN T. BALLANTINE
WILLIAM A. BARTH
OGDEN & ROBERTSON
1200 One Riverfront Plaza
Louisville, KY 40202
(502) 582-1601

Counsel for Respondents

APPENDIX

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. 85-209

GERALD M. SPARKS, - - - - - - - *Plaintiff,*

v.

KENTUCKY CHARACTER AND FITNESS COMMITTEE, ET AL. - - - - - *Defendant.*

MEMORANDUM OPINION—Entered June 25, 1985

This matter is before the court on the motion to dismiss of defendants Kentucky Character and Fitness Committee, Julius J. Beaver, Jr., Thomas P. Bell, Grant M. Helman, William J. Baird III, Stuart E. Lampe, and Pat Gill. They claim that the court lacks jurisdiction over the action because all of the defendants are protected by judicial immunity, that the complaint fails to state a claim upon which relief can be granted, and that plaintiff's complaint is in violation of Rule 8(a) of the Federal Rules of Civil Procedure and therefore, should be dismissed.

Plaintiff Gerald M. Sparks brings this suit *pro se* and *in forma pauperas* (sic) under 42 U.S.C. § 1983. He alleges that defendants, members and employees of the Kentucky Character and Fitness Committee and the Kentucky Board of Bar Examiners, prevented him from passing the Kentucky Bar examination in violation of his 8th, 5th, and 14th amendment constitutional rights. Specifically, Sparks contends that in 1980 Beaver placed a letter in his bar application file stating that he did not recommend Sparks to be admitted to the bar. Despite that letter, the Board per-

mitted Sparks to take the bar examination four times. He failed three if those examinations. The fourth was never graded. Thus, Sparks argues, the Committee unconstitutionally defrauded him by taking his application and examination fees knowing that it would never recommend him to the bar.

Without ruling on the other two contentions of the defendants, the court finds that the defendants are immune from suit. Thus, it shall grant their motion to dismiss. On April 17, 1985, this court entered an order dismissing plaintiff's claims against Chief Justice Robert F. Stephens. The court found that Stephens was protected by the doctrine of judicial immunity because consideration of an application for admission to the bar is judicial in nature and judges are absolutely immune from liability for damages for their judicial acts. *See Louis* v *Supreme Court of Nevada,* 490 F. Supp. 1174, 1181 (D. Nev. 1980); *Gallahad* v. *Weinshienk,* 555 F. Supp. 1201 (D. Colo. 1983). It follows from that decision that the same acts performed by an arm of the Kentucky Supreme Court retain their judicial nature as well as their immunity.

In the recent Supreme Court decision *Hoover* v. *Ronwin,* __ U. S. __, 104 S. Ct. 1989 (1984), the Court held that actions of the Arizona Supreme Court's Committee on Examinations and Admissions and Board of Bar Examiners relating to the grading of the bar examination could not be divorced from the Arizona Supreme Court's exercise of its power. Although that decision dealt with the Committee's liability under the Sherman Act, the Court's discussion of the relationship between the Committee and Board, and the state Supreme Court is equally applicable here.

The Kentucky Supreme Court has extensive authority over the Board of Bar Examiners and the Character and

Fitness Committee. Their members are appointed by the Supreme Court and the Court must approve the rules and regulations promulgated by those members. *Supreme Court Rules* 2.000 & 2.040. In addition, the court directs which subjects are to be tested and the minimum score needed to pass the examination. *Supreme Court Rule* 2.090. Finally, the court retains the final authority to determine who will be admitted to practice law in the State. *Supreme Court Rule* 2.060. Just as in the *Hoover* case, the actions of the Committee and Board which concern consideration of an application for admission to the bar cannot be divorced from the actions of the Supreme Court of Kentucky. Hence, those actions are clothed with judicial immunity.

Sparks' allegations concern improper consideration of his application for admission to the bar. For the reasons heretofore set forth those alleged acts are judicial in nature and the defendants are therefore, immune from suit. Accordingly, this court does not have jurisdiction to hear Spark's claim, and his complaint shall be dismissed.

An order of dismissal is this day entered.

DATED: June 24, 1985

(s) Edw. Johnstone
Edward H. Johnstone, Judge
United States Court

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

KENTUCKY CONSTITUTION § 116

The Supreme Court shall have the power to prescribe rules governing its appellate jurisdiction, rules for the appointment of commissioners and other court personnel, and rules of practice and procedure for the Court of Justice. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

RELEVANT SECTIONS OF UNITED STATES SUPREME COURT RULES

Rule 17. Considerations Governing Review on Certiorari

.1 A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual

course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

* * * * * * *

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

RELEVANT SECTIONS OF THE KENTUCKY SUPREME COURT RULES

Rule 2. Admission of Persons to Practice Law

Rule 2.000 Board of Bar Examiners

(1) There is hereby created a Board of Examiners known and designated as Kentucky Board of Bar Examiners, hereinafter referred to as "Board." The Board shall be composed of three attorneys appointed by the Supreme Court of Kentucky for terms of three years, the members to serve until the expiration of their terms and until their successors are appointed. The Board shall select from its membership a chairman and a secretary.

(2) Subject to the approval of the Supreme Court, the Board shall have the power to adopt and amend rules and regulations governing the manner in which it carries out its duties.

(3) The Board is charged with the responsibility of administering the bar examination to qualified applicants for admission to the bar of the Commonwealth.

Rule 2.040 Character and Fitness Committee Nominations

(1) There is hereby created a Committee on Character and Fitness, to be composed of three attorneys, appointed

by the Supreme Court for terms of three years, the members to serve until the expiration of their terms and until their successors are appointed. The Character and Fitness Committee shall select from its membership a chairman.

(2) Subject to the approval of the Supreme Court, the committee shall have the power to adopt and amend rules and regulations governing the manner in which it carries out its duties. The Character and Fitness Committee may appoint from the bar of the state associate members of the Character and Fitness Committee.

(3) The Committee on Character and Fitness is charged with the responsibility of determining the age, character and fitness, education and general qualifications of those applicants for admission to the bar of the Commonwealth whose applications are referred to it by the Clerk of the Supreme Court. The Character and Fitness Committee further shall be authorized to render advisory opinions, based on fact situations submitted to it in writing as to whether a person who has the academic qualifications for admission to a law school approved by the American Bar Association or the American Association of Law Schools would be eligible for admission to the bar of the Commonwealth from the standpoint of character. The Character and Fitness Committee is further charged with the duty of certifying to the Supreme Court persons who appear qualified to perform legal services as interns under Rule 2.540.

Rule 2.060 Committee's Decision as to Eligibility

The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this State shall be final unless, on motion by the applicant filed within 60 days after notice of an adverse

decision has been mailed to his last known address, the Supreme Court upon review of the record overrules such decision.

Rule 2.090 Bar Examinations

(1) The Board of Bar Examiners shall examine such applicants as are certified to it as provided in Rule 2.040. The examination shall cover a period of two days and may cover the following subjects:

(a) Administrative Law and Administrative Procedure
(b) Conflict of Laws
(c) Contracts
(d) Constitutional Law
(e) Corporations
(f) Criminal Law and Procedure
(g) Civil Procedure
(h) Domestic Relations
(i) Property (Real and Personal)
(j) Federal Taxation
(k) Torts
(l) Uniform Commercial Code
(m) Wills and Trusts
(n) Evidence.

Prior to or at the time of the examination, each applicant shall certify that he has successfully completed a course of study in law school in the subject of ethics, and that if admitted to practice he will adhere to the Code of Ethics prescribed by the Supreme Court. The changes made by this amendment shall be effective beginning with the July examination in 1979.

(2) The examination need not be given on the above grouping in the order set out, but the Board may cover the subject matter in any manner that it sees fit.

(3) An applicant who receives a general average of 75% or more shall be deemed to have passed the examination. An applicant who receives less that that percentage shall be deemed to have failed the examination. An applicant who fails to pass the examination may take additional complete examinations.

(4) The Board of Bar Examiners at the beginning of the first session shall give each applicant a numbered envelope. The applicant shall write his name upon a slip of paper, seal the name in the envelope and return the envelope to the Secretary of the Board. All papers will then be signed by the applicant only with the number upon his envelope. When the applicant has completed answering the questions on any given subject, he shall deposit his written answers thereto with the Secretary of the Board.

(5) Each applicant must complete his answers to the portion of the examination given to him before leaving the examination room for any purpose except by permission of the Board.

(6) The papers containing the questions and written answers given by applicants will be preserved by the Secretary of the Board for a period of one year from the time that the application for admission has been passed upon by the Supreme Court, and longer if so ordered by the Court.

(7) Upon recommendation of the Board of Bar Examiners, the Supreme Court may appoint qualified members of the bar, to be known as Bar Examination Graders, to assist the examiners in the grading of examination papers. Persons so appointed shall hold those positions for terms of one year and until the appointment of their successors.

(8) Effective for the February 1982 Bar Examination and thereafter each applicant must pay a fee of one hundred dollars ($100.00) for each examination. The Board

of Bar Examiners may waive the examination fee upon a satisfactory showing by the applicant that the payment thereof would cause him undue financial hardship.

Rule 2.095 Approval of License to Practice Law

(1) When an applicant has passed an examination as provided by Rule 2.090, the Board of Bar Examiners shall certify that fact to the Supreme Court together with a recommendation that the applicant be admitted to practice law. The Court, if in regular session, or any Justice thereof during vacation, shall, in the absence of disqualifying facts or circumstances brought to the attention of the Court or Justice, approve the recommendation and authorize the Clerk of the Court to issue a certificate of admission.

(2) When the Character and Fitness Committee determines that an applicant is eligilble for admission to the bar of this state without examination, the Committee's recommendation as provided for in Rule 2.040(6) shall be certified to the Supreme Court, and the approval for the issuance of a certificate shall be considered as set forth in paragraph (1) of this Rule.

SUPREME COURT OF KENTUCKY

HEARING BY THE CHARACTER AND FITNESS COMMITTEE
Kentucky State Bar Association

IN RE: Application for Permission to take the Kentucky Bar Examination
By: Gerald (Jerry) Marshall Sparks

DATE: April 16, 1983

TIME: 10:15 a.m.

PLACE TAKEN: Fowler, Measle & Bell
Suite 4A
Citizens Bank Square
Lexington, Kentucky 40507

APPEARANCES:

HON. THOMAS P. BELL, Chairman
Fowler, Measle & Bell
Suite 4A, Citizens Bank Square
Lexington, Kentucky 40507

HON. WILLIAM J. BAIRD, III, Member
Baird & Baird, P.S.C.
P. O. Box 351
Pikeville, Kentucky 41501

HON. GRANT M. HELMAN, Member
Room 603
312 South Fourth Street
Louisville, Kentucky 40202

HON. ISAAC CONLEY, JR.
Suite 518, Marion E. Taylor Building
312 South 4th Avenue
Louisville, Kentucky 40202
Attorney for Applicant

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Mr. Bell: Let the record state that Mr. Isaac Conley is present and representing the applicant, Jerry Sparks.

The Witness, JERRY SPARKS, after first being duly sworn, was examined and testified as follows:

Mr. Bell: I'd like to enter as Exhibit No. 1 on behalf of the Character & Fitness Committee letter under date of February 17, 1983, addressed to Mr. Jerry Sparks and signed by—this is a copy of a letter sent to him over the signature of Thomas Bell, Chairman, Character & Fitness Committee informing him of the hearing to be held on March 26, 1983. That hearing was rescheduled due to Mr. Baird's illness. And have that marked as Exhibit 1, please, for the record.

(Reporter marks Letter dated February 1, 1983, as Character & Fitness Exhibit No. 1 for the purpose of identification and the same is attached hereto and filed herewith)

Mr. Bell: I would like to have marked Exhibit No. 2 for Character & Fitness Committee, letter under date of March 25, 1983, addressed

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to Mr. Sparks over signature of Thomas Bell, setting today's date of April 16, 1983, at 10:00 a.m. for Mr. Sparks' hearing. And attached to that letter is a receipt where the letter was sent by certified mail, return receipt signed by Jerry Sparks. Enter it as a Character & Fitness exhibit and make it part of the record, please.

(Reporter marks Letter dated March 25, 1983, as Character & Fitness Exhibit No. 2 for the purpose of identification and the same is attached hereto and filed herewith)

Mr. Bell: Before I submit this as Exhibit 3, which is the Application to Take Bar Exam, I'd like to have Mr. Sparks and his attorney look at it. Is this the original application that you filed? It looks like some parts of it have been Xeroxed or copied on some type of machine.

Mr. Conley: Is that the one you sent?

(Witness examines same)

The Witness: Parts of this looks like a copy, part of it.

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By Mr. Conley

Q. 43. Mr. Bell indicates that in your application dated January 14th, which is one that I just referred to, that you admitted that you took the exam in July—on July 24th and July 25th, 1979. Did you, in fact, take the Pennsylvania Bar Examination on those dates?

A. I took the Pennsylvania Bar Exam in July, but in '75, 1975. I believe that's—and, also, in February of '75.

Q. 44. Okay. Was that—reflect (sic) in the amendment and the original application that you submitted—

A. Yes, sir.

Q. 45. —in January of this year?

A. I think so, yes, sir.

Q. 46. So you never took the exam in July—

A. No.

Q. 47. —1979 in Pennsylvania?

A. No, sir, I didn't.

Q. 48. Do you have an idea as to how Mr. Bell came to believe that you took it in July of 1979?

A. No, I don't.

Q. 49. You're absolutely certain, you never took the bar in Pennsylvania in July of 1979?

A. No, I did not; I took it in '75, though.

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By Mr. Bell

Q. 19. Okay. So, you did put it in this application?

A. Yes, sir.

Q. 20. But you didn't in the first one?

A. Yes.

Q. 21. And you're telling us that you didn't think the first application—you didn't take that seriously; is that what you're telling us?

A. I'm not saying I didn't take it seriously. I—probably in my mind at that time I felt like it would be held against me; and I came back home trying to make a new start.

Q. 22. And if you didn't put it in here, you didn't think that they'd find out about it? Is that why you didn't put in in there?

A. You mean on my original application?

Mr. Bell: Yes, sir.

A. Yes, sir, I guess so.

Q. 23. Okay. Now, you've listed some other cases here in your application on 1/21/81, harassing or simple assault. Were you arrested for that?

A. No, sir, that was a summons.

Q. 24. It was a summons?

A. Uh-huh.

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Q. 42. That's just three, four years ago. Did you take it or didn't you?

A. Hmmmm, I'm going to say I did take it.

Q. 43. Now you're changing your testimony, that you did take it?

A. Yes, sir, because I believe—

Q. 44. Because that letter does refresh your memory and you're not so specific now as you were?

A. Well—all right, I did not have any—when I told you I didn't take it in 1979, I did not tell you that to deceive you. I had—honestly believed that I did not take that Bar in '79. I remember exactly taking it in 1975, okay; I remember taking it in Pennsylvania, because that was right before I went through the divorce; that's the reason I remember it. But, this letter does refresh my memory and, based upon this letter, I say I had it in 1979.

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Mr. Helman: Of course, our decision is subject to appeal.

Mr. Conley: Thank you for your consideration.

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THEREUPON, the Hearing in the aforementioned matter was concluded.

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